

ORDINANCE NO. 1767

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING TITLE 15 OF THE SANTA CLARA MUNICIPAL CODE TO ADD CHAPTER 15.65 SETTING FORTH REQUIREMENTS REGARDING WOOD BURNING APPLIANCES AND PROHIBITED FUELS

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:

WHEREAS, the State Air Resources Board (ARB) adopted a particular matter (PM10) Ambient Air Quality Standard (AAQS) in December 1982, and levels for the PM10 AAQS were selected pursuant to California Code of Regulations Title 17 Section 70200 to protect the health of people who are sensitive to exposed to fine particles; and

WHEREAS, research indicates that wood smoke is a significant contributor to PM10 levels that pose significant health risks; and

WHEREAS, the City of Santa Clara desires to lessen the risk to life and property from air pollution from wood burning appliances; and

WHEREAS, the City of Santa Clara finds that the proposed regulation will significantly reduce the increase in particular emissions from future installation and construction activities; and

WHEREAS, the City of Santa Clara finds that a need exists to adopt regulations which apply to wood burning combustion emissions; and

WHEREAS, this Ordinance was found to be categorically exempt from environmental review, per the provisions of 14 California Code of Regulations Section 15061(b)(3) California Environmental Quality Act Guidelines.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:

SECTION 1: That “The Code of the City of Santa Clara, California” [“**City Code**” or “**SCCC**”] is in the process of recodification. The new City Code will have a completely new numbering system. The section numbers in this ordinance utilize the new numbering system. Until the new City Code is adopted in its entirety, sections that are amended are enacted with the new numbering system. In instances where it is necessary (or convenient) for enforcement and/or fee collection purposes, resort may be made to a conversion table, which correlates the new section numbers to the old section numbers, and either section number (new or old) may be utilized.

SECTION 2: Title 15 (entitled “Buildings and Construction”) of the City Code is hereby amended by adding a new Chapter to be numbered 15.65, (entitled “Wood Burning Appliances”) to read as follows:

**“CHAPTER 15.65
WOOD BURNING APPLIANCES**

Article I. Definitions and General Provisions

Sec. 15.65.10 Definitions

The definitions set forth in Article I shall govern the application and interpretation of this Chapter.

- (a) **Bay Area Air Quality Management District** (“BAAQMD”) means the air quality agency for the San Francisco Bay Area established pursuant to California health and Safety Code Section 40200.
- (b) **EPA** means United States Environmental Protection Agency.
- (c) **EPA Certified Wood Heater** means any wood heater that meets the standards in Title 40, Part 60, Subpart AAA, Code of Federal Regulations in effect at the time of installation and is certified and labeled pursuant to those regulations.
- (d) **Fireplace** means any permanently installed masonry or factory-build wood burning appliance, except a pellet-fueled wood heater, designed to be used with an air-to-fuel ratio greater than or equal to thirty-five (35) to one (1).
- (e) **Gas Fireplace** means a fireplace or any other listed gas appliance as defined in the Uniform Mechanical Code designed to burn natural gas in a manner that simulates the appearance of a wood burning fireplace and does not burn anything other than natural gas.
- (f) **Paints** means all exterior and interior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, under coatings, roof coatings, wood preservatives, shellacs, and other paints or paint-like products.
- (g) **Paint Solvents** means all original solvents sold or used to thin paints or to clean up painting equipment.
- (h) **Pellet-Fueled Wood Heater** means any wood burning appliance that operate exclusively on wood pellets.
- (i) **Solid Fuel** means wood or any other non-gaseous or non-liquid fuel.

- (j) **Treated Wood** means wood of any species that has been chemically impregnated, painted or similarly modified to improve resistance to insects or weathering.
- (k) **Waste Petroleum Products** means any petroleum product other than gaseous fuels that has been refined from crude oil, and has been used, and as a result of use, has been contaminated with physical or chemical impurities.
- (l) **Wood Burning Appliance** means fireplace, wood heater, or pellet-fired wood heater or any similar device burning any solid fuel used for aesthetic or space-heating purposes.

Sec. 15.65.20 Residential Installations

All wood burning appliances installed in new residential units or wood burning appliances being added to existing residential units shall comply with this Chapter.

Sec. 15.65.30 Commercial Installations

All wood burning appliances installed in new commercial buildings or wood burning appliances being added to existing commercial buildings shall comply with this Chapter. Commercial buildings shall include, but not be limited to, hotels and restaurants.

Sec. 15.65.40 Gas Fireplaces

Gas fireplaces shall be exempt from this Chapter. However, the conversion of a gas fireplace to burn wood shall constitute the installation of a wood burning appliance and shall be subject to the requirements of the Chapter.

Article II. Prohibitions

Sec. 15.65.50 Unauthorized Appliances Prohibited

Except as provided elsewhere in this Chapter, any new commercial or residential wood burning appliance installed must be one of the following:

- (a) A pellet-fueled wood heater;
- (b) An EPA certified wood heater;
- (c) A fireplace certified by EPA or a fireplace certified by an EPA-accredited laboratory as being compliant with the Northern Sonoma County Air Pollution Control District standards for fireplaces, using that district's testing protocol for fireplaces;

- (d) New fireplaces in newly built or existing residential, commercial or other non-residential structures that replace lawful fireplaces which exist at the time when an application is approved for construction of new fireplaces;
- (e) Outdoor fireplaces which are not attached to a structure; or
- (f) Wood burning appliances which are primarily used for the preparation of food.

Sec. 15.65.60 Certification

Any person who plans to install a wood burning appliance must obtain a building permit and submit documentation to the Building Department demonstrating that the appliance is a pellet-fueled wood heater, an EPA certified wood heater or a fireplace certified by EPA or a fireplace certified by an EPA-accredited laboratory as being compliant with the Northern Sonoma County Air Pollution Control District standards for fireplaces, using that district's testing protocol for fireplaces.

Sec. 15.65.70 Prohibited Fuels

The following fuels are prohibited from use in a wood burning appliance:

- (a) Any treated wood, plastic products, rubber products, glossy or colored papers and particle board;
- (b) Any solid, semi-solid and liquid wastes generated from residential, commercial and industrial sources, including trash, refuse, rubbish, industrial wastes, asphaltic products, manure, vegetable or animal solids and semi-solid wastes, or other discarded solid and semi-solid wastes;
- (c) Waste petroleum Products;
- (d) Paints or Paint Solvents;
- (e) Coal; and/or
- (f) Salt water driftwood.

Sec. 15.65.80 Burning Solid Waste - Limitations - Specifications

No person shall burn any solid waste within the limits of the City except in accordance with and subject to the following limitations and conditions:

- (a) No person shall burn any garbage, or any rubbish that originates from any industrial or commercial establishment or any hospital, clinic, medical or dental office or medical laboratory, except in accordance with Title 15 of this Code.

- (b) No person shall create or cause the emission of noxious or offensive odors, dense smoke, or any private or public nuisance by burning any solid waste.
- (c) No fire shall be kindled or maintained by any person within or upon any public street, way, road alley, waterway, or other public property or place, except by a member of the Fire Department acting under the direction of the Fire Chief or a designee of the Fire Chief.
- (d) No person shall burn any solid waste within or upon any premises except for the burning of fuel in wood burning appliances, which is not prohibited under Section 15.65 of this Code.
- (e) Notwithstanding any other provision of this Section, the Fire Marshal of the Fire Department may issue a permit for the burning of a bonfire or other fire in an outdoor location pursuant to Chapter 11 of this Code.”

Sec. 15.65.90 Enforcement

Pursuant to the City’s prosecutorial discretion, the City may enforce violations of the provisions of Chapter 15.65 as criminal, civil or administrative actions.

- (a) Any person who violates any of the provisions of this Chapter or any of the provisions of any written authority by the City Manager or her/his duly authorized agents and representatives shall be guilty of an infraction and/or misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued, or allowed, shall be a separate offense.
- (b) Every violation of this Chapter shall be a misdemeanor, provided, however, that where the City Attorney has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading or citation, that the violation shall be prosecuted as an infraction.
- (c) Each and every violation of this Chapter which is deemed an infraction is punishable by:
 - (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation;
 - (2) A fine not exceeding two hundred dollars (\$200.00) for the second violation of the same or similar provision within one year period; or,
 - (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation, after the second, of the same or similar provision of this Chapter within a one year period of the first violation.

- (d) Each and every violation of this Chapter which is deemed a misdemeanor is punishable by a penalty of not more than one thousand dollars (\$1,000.00), or by imprisonment in the City or County jail for a period not exceeding six (6) months, or, by both penalty and imprisonment.
- (e) Any person who intentionally, accidentally, or negligently violates any provision of this Chapter, any written authority issued by the City Manager, or his or her designees, or any provision of any permit issued pursuant to said Chapter may be civilly liable to the City in the sum of not less than one hundred dollars (\$100.00) but not to exceed one thousand dollars (\$1,000.00) per day for each day in which such violation occurs or continues. The civil penalty provided in this Section excludes inspection and/or repair costs, is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under State and Federal law and local ordinances.
- (f) Violations of this Chapter shall also be deemed a public nuisance.

Sec. 15.65.100 Administrative Penalties

Administrative penalties provided in this Section shall be pursuant to administrative procedures established by Ordinance Number 1759, shall not exceed one thousand dollars (\$1,000.00) per day, excluding inspection and/or repair costs, and shall be in addition to all other remedies available to the City under state, federal and local laws.”

SECTION 3: Savings Clause

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance.

All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Constitutionality, severability

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 5: Effective Date

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this 7TH day of May 2002, by the following vote:

AYES:	COUNCILORS:	Diridon, Kolstad, Mahan, Matthews, McLemore, Parle and Mayor Nadler
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:
J. E. BOCCIGNONE
City Clerk
City of Santa Clara

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA this 21st day of May 2002, by the following votes:

AYES:	COUNCILORS:	Diridon, Kolstad, Mahan, Matthews, McLemore, Parle and Mayor Nadler
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: _____
J. E. BOCCIGNONE
City Clerk
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